Montana Legislative History

Chapter: 743 Session L: 2023

Bill Number: **House** 903

Checklist of Bill History

History and Final Status Sheet	X
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Business and Labor

Hearing Date(s):
March 28, 2023
March 29, 2023
Executive Action

Senate

Committee: Business, Labor and Economic Affairs

Hearing Date(s):
April 7, 2023
April 27, 2023 Executive Action

Committee Report:

Conference Committee n/a

Compiler Notes

Compiled by: smg

Date: Jan. 19, 2024

Notes: Links to committee hearings:

March 28, 2023
March 29, 2023
April 7, 2023
April 27, 2023

Bill Draft Number: LC3111
Bill Type - Number: HB 903
Short Title: Generally revise marijuana laws
Primary Sponsor: Mike Hopkins (R) HD 92
Chapter Number: 743

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 56

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/22/2023			
(H) Signed by Governor	05/22/2023			
(H) Transmitted to Governor	05/12/2023			
(S) Signed by President	05/11/2023			
(H) Signed by Speaker	05/11/2023			
(C) Printed - Enrolled Version Available	05/11/2023			
(H) Returned from Enrolling	05/11/2023			
(H) Sent to Enrolling	05/03/2023			
(H) 3rd Reading Passed as Amended by Senate	05/02/2023	49	47	
(H) Scheduled for 3rd Reading	05/02/2023			
(H) 2nd Reading Senate Amendments Concurred	05/02/2023	53	46	
(H) Scheduled for 2nd Reading	05/02/2023			
(S) Returned to House with Amendments	04/28/2023			
(S) 3rd Reading Concurred	04/28/2023	40	9	
(S) Scheduled for 3rd Reading	04/28/2023			
(S) 2nd Reading Concurred	04/28/2023	45	5	
(S) Scheduled for 2nd Reading	04/28/2023			
(C) Printed - New Version Available	04/27/2023			
(S) Committee Report--Bill Concurred as Amended	04/27/2023			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Concurred as Amended	04/27/2023	10	0	(S) Business, Labor, and Economic Affairs
(C) Amendments Available	04/18/2023			
(S) Hearing	04/07/2023			(S) Business, Labor, and Economic Affairs
(S) Referred to Committee	04/04/2023			(S) Business, Labor, and Economic Affairs
(S) First Reading	04/04/2023			
(H) Transmitted to Senate	04/04/2023			
(H) 3rd Reading Passed	04/03/2023	87	11	
(H) 2nd Reading Passed	03/31/2023	82	18	
(H) Fiscal Note Printed	03/31/2023			

(H) Fiscal Note Signed	03/31/2023			
(H) Fiscal Note Received	03/31/2023			
(H) Committee Report--Bill Passed	03/29/2023			(H) Business and Labor
(H) Committee Executive Action--Bill Passed	03/29/2023	19	0	(H) Business and Labor
(H) Hearing	03/28/2023			(H) Business and Labor
(H) First Reading	03/25/2023			
(H) Referred to Committee	03/25/2023			(H) Business and Labor
(C) Introduced Bill Text Available Electronically	03/24/2023			
(H) Fiscal Note Requested	03/24/2023			
(H) Introduced	03/24/2023			
(C) Fiscal Note Probable	03/24/2023			
(C) Draft Delivered to Requester	03/24/2023			
(C) Draft Ready for Delivery	03/23/2023			
(C) Executive Director Final Review	03/23/2023			
(C) Draft Ready for Delivery	03/23/2023			
(C) Draft in Assembly	03/23/2023			
(C) Executive Director Review	03/23/2023			
(C) Bill Draft Text Available Electronically	03/23/2023			
(C) Draft in Final Drafter Review	03/23/2023			
(C) Draft in Input/Proofing	03/23/2023			
(C) Draft to Drafter - Edit Review	03/22/2023			
(C) Draft in Edit	03/20/2023			
(C) Draft in Legal Review	03/20/2023			
(C) Draft to Requester for Review	03/20/2023			
(C) Draft to Requester for Review	03/15/2023			
(C) Draft Taken Off Hold	03/15/2023			
(C) Draft On Hold	12/22/2022			
(C) Draft Request Received	12/05/2022			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Hopkins	Mike	
Drafter	Sullivan	Erin	
Primary Sponsor	Hopkins	Mike	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Alcohol and Drugs		Simple	ALC
Appropriations (see also: State Finance)	Appropriation	Simple	APP

Revenue, State	Revenue	Simple	REVS

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number: 743
DEADLINE
Category: Revenue Bills
Transmittal Date: 04/04/2023
Return (with 2nd house amendments) Date: 04/28/2023

Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 1-2 and 4-14	22-MAY-23	
Section 3	01-JAN-24	

AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA; ADDING PRESCHOOLS TO THE DISTANCE REQUIREMENT FOR A LICENSED PREMISES; ALLOWING A COMBINED-USE LICENSE TO INCREASE CANOPY TIERS; REVISING THE FEE STRUCTURE FOR LICENSING OF DISPENSARIES; REQUIRING A REPORT TO THE BOARD OF MEDICAL EXAMINERS UNDER CERTAIN CONDITIONS; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 16-12-102, 16-12-201, 16-12-207, 16-12-223, 16-12-224, 16-12-225, AND 16-12-509, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-12-102, MCA, is amended to read:

"**16-12-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(3) "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(4) "Canopy" means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or

marijuana products for personal use from a licensed dispensary but not for resale.

(6) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(7) "Controlling beneficial owner" means a person that satisfies one or more of the following:

(a) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, or a publicly traded corporation, and:

(i) acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

(ii) is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

(iii) is otherwise in a position to control the marijuana business; or

(b) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

(8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.

(9) "Cultivator" means a person licensed by the department to:

(a) plant, cultivate, grow, harvest, and dry marijuana; and

(b) package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

(11) "Department" means the department of revenue provided for in 2-15-1301.

(12) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) "Former medical marijuana licensee" means a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on ~~November 3, 2020~~ April 27, 2021.

(15) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) The term may include:

(i) a greenhouse;

(ii) a hoop house; or

(iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(16) "Licensed premises" means all locations related to, or associated with, a specific license that is authorized under this chapter and includes all enclosed public and private areas at the location that are used in

the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

(17) "Licensee" means a person holding a state license issued pursuant to this chapter.

(18) "Local government" means a county, a consolidated government, or an incorporated city or town.

(19) "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under this chapter.

(20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.

(22) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana products.

(24) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

(25) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and

to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.

(28) "Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.

(29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.

(30) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(31) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

(32) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

(33) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(34) "Qualified institutional investor" means:

(a) a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) a bank holding company as defined in 32-1-109;

(c) a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such an insurance company;

(d) an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) a state or federal government pension plan; or

(g) any other entity identified by rule by the department.

(35) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(36) "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this chapter if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(38) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(39) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.

(40) "Testing laboratory" means a qualified person, licensed under this chapter that:

(a) provides testing of representative samples of marijuana and marijuana products; and

(b) provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

(41) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) The term does not include the seeds, stalks, and roots of the plant. (Subsection (15)(b)(ii) terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

Section 2. Section 16-12-201, MCA, is amended to read:

"**16-12-201. Licensing of cultivators, manufacturers, and dispensaries.** (1) (a) Between January 1, 2022, and June 30, 2023, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on ~~November 3, 2020~~ April 27, 2021, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after July 1, 2023.

(2) (a) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 and to consumers at the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana licensee's next license renewal date, by which time the former medical licensee must have applied for and obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term

implementing staggered license terms may be prorated by the department."

Section 3. Section 16-12-207, MCA, is amended to read:

"**16-12-207. Licensing as privilege -- criteria.** (1) A cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use marijuana license, marijuana transporter license, or any other license authorized under this chapter is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the department shall consider:

(a) the qualifications of the applicant; and

(b) the suitability of the proposed licensed premises, including but not limited to cultivation centers, dispensaries, and manufacturing facilities.

(2) The department may deny or revoke a license based on proof that the applicant made a false statement in any part of the original application or renewal application.

(3) (a) The department shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed licensed premises:

(i) is situated within a zone of a locality where an activity related to the use of marijuana conflicts with an ordinance, a certified copy of which has been filed with the department;

(ii) is not approved by local building, health, or fire officials as provided for in this chapter; or

(iii) is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, ~~or~~ as a school or postsecondary school other than a commercially operated school, or as a child-care facility licensed or registered by the department of public health and human services, unless the locality requires a greater distance. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This subsection (3)(a)(iii) does not apply if the application is for license renewal and the licensed premises was established before the church, synagogue, or other place of worship or school or postsecondary school or child-care facility existed on the same street.

(b) For the purposes of this subsection (3), "school" ~~and "postsecondary school" have the meanings provided in 20-5-402~~ includes public and private preschools.

(c) The provisions of subsection (3)(a)(iii) apply to new license applications submitted on or after [the effective date of this section].

(4) A licensee may not sell or otherwise transfer marijuana or marijuana products through a drive-up window, except that a dispensary may hand-deliver marijuana or marijuana products to a registered cardholder in a vehicle that is parked immediately outside the subject dispensary.

(5) A marijuana business may not dispense or otherwise sell marijuana or marijuana products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises.

(6) A marijuana business may not utilize the United States postal service or an alternative carrier other than a licensed marijuana transporter to transport, distribute, ship, or otherwise deliver marijuana or marijuana products.

(7) A marijuana business may not provide free marijuana or marijuana products or offer samples of marijuana or marijuana products.

(8) Marijuana or a marijuana product may not be given as a prize, premium, or consideration for a lottery, contest, game of chance, game of skill, or competition of any kind.

(9) (a) Except as provided in subsection (9)(c), an adult-use dispensary or medical marijuana dispensary must have a single, secured entrance for patrons and shall implement strict security measures to deter and prevent the theft of marijuana and unauthorized entrance in accordance with department rule.

(b) Except as provided in subsection (9)(c), a marijuana business that is not an adult-use dispensary or medical marijuana dispensary must implement security measures in accordance with department rule to deter and prevent the theft of marijuana and unauthorized entrance.

(c) The provisions of this subsection (9) do not supersede any state or local requirements relating to minimum numbers of points of entry or exit or any state or local requirements relating to fire safety.

(10) Each marijuana business shall install a video monitoring system that must, at a minimum:

(a) allow for the transmission and storage, by digital means, of a video feed that displays the interior and exterior of the cannabis establishment; and

(b) be capable of being recorded as prescribed by the department.

(11) An adult-use dispensary or medical marijuana dispensary may not operate between the hours of 8 p.m. and 9 a.m. daily.

(12) A person under 21 years of age is not permitted inside a marijuana business unless the person is a registered cardholder."

Section 4. Section 16-12-223, MCA, is amended to read:

"**16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor

cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only one tier at a time.

~~(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections~~

~~(1)(e)(i)(A) and (1)(e)(i)(B).~~

(iii) A cultivator under a combined-use license may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license;

(k) $27,000 for a cultivator with a tier 10 canopy license;

(l) $32,000 for a cultivator with a tier 11 canopy license; and

(m) $37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

(6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation."

Section 5. Section 16-12-224, MCA, is amended to read:

"**16-12-224. Licensing of dispensaries.** (1) Except as provided in 16-12-201(2), an applicant for a dispensary license shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied in the jurisdiction where each proposed dispensary is located if the proposed dispensary would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(2) When evaluating an initial or renewal application, the department shall evaluate each proposed dispensary for compliance with the provisions of 16-12-207 and 16-12-210.

(3) An adult-use dispensary licensee may operate at a shared location with a medical marijuana dispensary if the adult-use dispensary and medical marijuana dispensary are owned by the same person.

(4) A medical marijuana dispensary is authorized to sell exclusively to registered cardholders marijuana, marijuana products, and live marijuana plants.

(5) An adult-use dispensary is authorized to sell marijuana, marijuana products, and live marijuana plants to consumers or registered cardholders.

(6) (a) The department shall charge a dispensary license fee for an initial application and at each renewal.

(b) The dispensary license fee is $5,000 for ~~each~~ the first location that a licensee operates as an adult-use dispensary or a medical marijuana dispensary. The dispensary license fee increases cumulatively by $5,000 for each additional location under the same license.

(7) The department may adopt rules:

(a) for inspection of proposed dispensaries;

(b) for investigating owners or applicants for a determination of financial interest; and

(c) establishing or limiting the THC content of the marijuana or marijuana products that may be sold at an adult-use dispensary or medical marijuana dispensary.

(8) (a) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(b) Except as provided in subsection (8)(c), for purposes of this chapter, a single package is limited to:

(i) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential psychoactive THC of marijuana flower may not exceed 35%.

(ii) for a marijuana product sold as a capsule, no more than 100 milligrams of THC per capsule and no more than 800 milligrams of THC per package.

(iii) for a marijuana product sold as a tincture, no more than 800 milligrams of THC;

(iv) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of THC. A single serving of an edible marijuana product may not exceed 10 milligrams of THC.

(v) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and no more than 800 milligrams of THC per package;

(vi) for a marijuana product sold as a suppository or transdermal patch, no more than 100 milligrams of THC per suppository or transdermal patch and no more than 800 milligrams of THC per package; and

(vii) for any other marijuana product, no more than 800 milligrams of THC.

(c) A dispensary may sell marijuana or marijuana products having higher THC potency levels than described in subsection (8) to registered cardholders.

(9) A licensee or employee is prohibited from conducting a transaction that would result in a consumer or registered cardholder exceeding the personal possession amounts set forth in 16-12-106 and 16-12-515."

Section 6. Section 16-12-225, MCA, is amended to read:

"**16-12-225. Combined-use marijuana licensing -- requirements.** (1) The department may issue a total of eight combined-use marijuana licenses to entities that are:

(a) a federally recognized tribe located in the state; or

(b) a business entity that is majority-owned by a federally recognized tribe located in the state.

(2) A combined-use marijuana license consists of one ~~tier 1 canopy~~ cultivator license and one dispensary license allowing for the operation of a dispensary. Cultivation and dispensary facilities must be located at the same licensed premises.

(3) Initial licensure and annual fees for a combined-use license is $7,500.

~~(3)~~(4) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

(a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little Shell Chippewa tribe only, within 150 air-miles of the tribal service area; and

(b) in a county that has satisfied the local government approval provisions in 16-12-301 if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

~~(4)~~(5) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

~~(5)~~(6) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

~~(6)~~(7) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department."

Section 7. Section 16-12-509, MCA, is amended to read:

"**16-12-509. Written certification -- accompanying statements.** (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the patient for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the patient's treating physician and that the patient has been under the physician's ongoing medical care as part of a bona fide professional relationship with the patient; or

(ii) the patient's referral physician;

(b) confirm that the patient suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination, whether in person or, in accordance with subsection (4), through the use of telemedicine, that included a personal review of any medical records maintained by other physicians and that may have included the patient's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the patient and has considered the potential drug interaction with marijuana;

(g) state that the physician has a reasonable degree of certainty that the patient's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(h) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the patient;

(i) list restrictions on the patient's activities due to the use of marijuana;

(j) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(k) state that the physician will:

(i) continue to serve as the patient's treating physician or referral physician; and

(ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the treatment; and

(l) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) A physician who is providing written certification through the use of telemedicine:

(a) shall comply with the administrative rules adopted for telemedicine by the board of medical examiners provided for in 2-15-1731; and

(b) may not use an audio-only visit unless the physician has first established a physician-patient relationship through an in-person encounter.

(5) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

(6) The department shall provide the board of medical examiners with the name of any physician who provides a written certification for 39 or more patients within any given calendar year. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care. The physician whose practices are under review shall pay the costs of the board's review activities."

Section 8. Appropriation. There is appropriated $1,000 from the state special revenue fund under 16-12-111 to the department of revenue for the biennium ending June 30, 2023, for the purposes of notification to licensees of the provisions of [this act].

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 10. Coordination instruction. If both House Bill No. 128 and [this act] are passed and approved, and if both amend 16-12-223, then [section 20 of House Bill No. 128], amending 16-12-223, is void and [section 5 of this act], amending 16-12-223, must be amended as follows:

"**16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor

cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only one tier at a time.

~~(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).~~

(iii) A cultivator under a combined-use license may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before ~~July 1, 2023~~ July 1, 2025, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license;

(k) $27,000 for a cultivator with a tier 10 canopy license;

(l) $32,000 for a cultivator with a tier 11 canopy license; and

(m) $37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

(6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation."

Section 11. Coordination instruction. If both House Bill No. 128 and [this act] are passed and approved, and if both amend 16-12-201, then [section 11 of House Bill No. 128], amending 16-12-201, is void and [section 2 of this act], amending 16-12-201, must be amended as follows:

"**16-12-201. Licensing of cultivators, manufacturers, and dispensaries.** (1) (a) Between January 1, 2022, and ~~June 30, 2023~~ June 30, 2025, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on ~~November 3, 2020~~ April 27, 2021, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after ~~July 1, 2023~~ July 1, 2025.

(2) (a) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 and to consumers at the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana licensee's next license renewal date, by which time the former medical licensee must have applied for and

obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department."

Section 12. Coordination instruction. If both House Bill No. 128 and [this act] are passed and approved, and if both amend 16-12-102, then [section 3 of House Bill No. 128], amending 16-12-102, is void and [section 1 of this act], amending 16-12-102, must be amended as follows:

"**16-12-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(3) "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(4) "Canopy" means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or marijuana products for personal use from a licensed dispensary but not for resale.

(6) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(7) "Controlling beneficial owner" means a person that satisfies one or more of the following:

(a) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, or a publicly traded corporation, and:

(i) acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

(ii) is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

(iii) is otherwise in a position to control the marijuana business; or

(b) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

(8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.

(9) "Cultivator" means a person licensed by the department to:

(a) plant, cultivate, grow, harvest, and dry marijuana; and

(b) package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

(11) "Department" means the department of revenue provided for in 2-15-1301.

(12) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) "Former medical marijuana licensee" means a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on ~~November 3, 2020~~ April 27, 2021.

(15) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) The term may include:

(i) a greenhouse;

(ii) a hoop house; or

(iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(16) "Licensed premises" means all locations related to, or associated with, a specific license that is

authorized under this chapter and includes all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

(17) "Licensee" means a person holding a state license issued pursuant to this chapter.

(18) "Local government" means a county, a consolidated government, or an incorporated city or town.

(19) "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under this chapter.

(20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.

(22) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana products.

(24) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer ~~by a means other than smoking~~. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates, including concentrates intended for use by smoking or vaping.

(25) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.

(28) "Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.

(29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.

(30) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(31) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

(32) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

(33) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(34) "Qualified institutional investor" means:

(a) a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) a bank holding company as defined in 32-1-109;

(c) a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of

another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such an insurance company;

(d) an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) a state or federal government pension plan; or

(g) any other entity identified by rule by the department.

(35) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(36) "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this chapter if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(38) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

~~(39) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.~~

~~(40)~~(39) "Testing laboratory" means a qualified person, licensed under this chapter that:

(a) provides testing of representative samples of marijuana and marijuana products; and

(b) provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

~~(41)~~(40) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) The term does not include the seeds, stalks, and roots of the plant. (Subsection (15)(b)(ii)

terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective January 1, 2024.

- END -

I hereby certify that the within bill,

HB 903, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2023.

_____

President of the Senate

Signed this _____day

of_____, 2023.

HOUSE BILL NO. 903

INTRODUCED BY M. HOPKINS

AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA; ADDING PRESCHOOLS TO THE DISTANCE REQUIREMENT FOR A LICENSED PREMISES; ALLOWING A COMBINED-USE LICENSE TO INCREASE CANOPY TIERS; REVISING THE FEE STRUCTURE FOR LICENSING OF DISPENSARIES; REQUIRING A REPORT TO THE BOARD OF MEDICAL EXAMINERS UNDER CERTAIN CONDITIONS; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 16-12-102, 16-12-201, 16-12-207, 16-12-223, 16-12-224, 16-12-225, AND 16-12-509, MCA; AND PROVIDING EFFECTIVE DATES.

HOUSE BILL NO. 903

INTRODUCED BY M. HOPKINS

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA; ALLOWING A COMBINED-USE LICENSE TO INCREASE CANOPY TIERS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-12-223 AND 16-12-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-12-223, MCA, is amended to read:

"**16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a

jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only one tier at a time.

~~(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).~~

(iii) A cultivator under a combined-use license may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license;

(k) $27,000 for a cultivator with a tier 10 canopy license;

(l) $32,000 for a cultivator with a tier 11 canopy license; and

(m) $37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

(6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation."

Section 2. Section 16-12-225, MCA, is amended to read:

"**16-12-225. Combined-use marijuana licensing -- requirements.** (1) The department may issue a total of eight combined-use marijuana licenses to entities that are:

(a) a federally recognized tribe located in the state; or

(b) a business entity that is majority-owned by a federally recognized tribe located in the state.

(2) A combined-use marijuana license consists of one ~~tier 1~~ canopy license and one dispensary license allowing for the operation of a dispensary. Cultivation and dispensary facilities must be located at the same licensed premises.

(3) Initial licensure and annual fees for a combined-use license is $7,500.

~~(3)~~(4) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

(a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little Shell Chippewa tribe only, within 150 air-miles of the tribal service area; and

(b) in a county that has satisfied the local government approval provisions in 16-12-301 if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020,

general election.

~~(4)~~(5) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

~~(5)~~(6) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

~~(6)~~(7) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department."

NEW SECTION. **Section 3. Appropriation.** There is appropriated $1,000 from the state special revenue fund under 16-12-111 to the department of revenue for the biennium ending June 30, 2023, for the purposes of notification to licensees of the provisions of [this act].

NEW SECTION. **Section 4. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 903

INTRODUCED BY M. HOPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA; ADDING PRESCHOOLS TO THE DISTANCE REQUIREMENT FOR A LICENSED PREMISES; ALLOWING A COMBINED-USE LICENSE TO INCREASE CANOPY TIERS; REVISING THE FEE STRUCTURE FOR LICENSING OF DISPENSARIES; REQUIRING A REPORT TO THE BOARD OF MEDICAL EXAMINERS UNDER CERTAIN CONDITIONS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-12-102, 16-12-201, 16-12-207, 16-12-223, 16-12-224, ~~AND~~ 16-12-225, AND 16-12-509, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE~~ EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 16-12-102, MCA, IS AMENDED TO READ:

"**16-12-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(3) "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(4) "Canopy" means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or

marijuana products for personal use from a licensed dispensary but not for resale.

(6) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(7) "Controlling beneficial owner" means a person that satisfies one or more of the following:

(a) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, or a publicly traded corporation, and:

(i) acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

(ii) is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

(iii) is otherwise in a position to control the marijuana business; or

(b) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

(8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.

(9) "Cultivator" means a person licensed by the department to:

(a) plant, cultivate, grow, harvest, and dry marijuana; and

(b) package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

(11) "Department" means the department of revenue provided for in 2-15-1301.

(12) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) "Former medical marijuana licensee" means a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on ~~November 3, 2020~~ April 27, 2021.

(15) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) The term may include:

(i) a greenhouse;

(ii) a hoop house; or

(iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(16) "Licensed premises" means all locations related to, or associated with, a specific license that is authorized under this chapter and includes all enclosed public and private areas at the location that are used in

the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

(17) "Licensee" means a person holding a state license issued pursuant to this chapter.

(18) "Local government" means a county, a consolidated government, or an incorporated city or town.

(19) "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under this chapter.

(20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.

(22) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana products.

(24) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

(25) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and

to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.

(28) "Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.

(29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.

(30) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(31) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

(32) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

(33) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(34) "Qualified institutional investor" means:

(a) a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) a bank holding company as defined in 32-1-109;

(c) a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such an insurance company;

(d) an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) a state or federal government pension plan; or

(g) any other entity identified by rule by the department.

(35) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(36) "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this chapter if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(38) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(39) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.

(40) "Testing laboratory" means a qualified person, licensed under this chapter that:

(a) provides testing of representative samples of marijuana and marijuana products; and

(b) provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

(41) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) The term does not include the seeds, stalks, and roots of the plant. (Subsection (15)(b)(ii) terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

SECTION 2. SECTION 16-12-201, MCA, IS AMENDED TO READ:

"**16-12-201. Licensing of cultivators, manufacturers, and dispensaries.** (1) (a) Between January 1, 2022, and June 30, 2023, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on ~~November 3, 2020~~ April 27, 2021, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after July 1, 2023.

(2) (a) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 and to consumers at the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana licensee's next license renewal date, by which time the former medical licensee must have applied for and obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term

implementing staggered license terms may be prorated by the department."

SECTION 3. SECTION 16-12-207, MCA, IS AMENDED TO READ:

"**16-12-207. Licensing as privilege -- criteria.** (1) A cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use marijuana license, marijuana transporter license, or any other license authorized under this chapter is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the department shall consider:

(a) the qualifications of the applicant; and

(b) the suitability of the proposed licensed premises, including but not limited to cultivation centers, dispensaries, and manufacturing facilities.

(2) The department may deny or revoke a license based on proof that the applicant made a false statement in any part of the original application or renewal application.

(3) (a) The department shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed licensed premises:

(i) is situated within a zone of a locality where an activity related to the use of marijuana conflicts with an ordinance, a certified copy of which has been filed with the department;

(ii) is not approved by local building, health, or fire officials as provided for in this chapter; or

(iii) is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, ~~or~~ as a school or postsecondary school other than a commercially operated school, or as a child-care facility licensed or registered by the department of public health and human services, unless the locality requires a greater distance. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This subsection (3)(a)(iii) does not apply if the application is for license renewal and the licensed premises was established before the church, synagogue, or other place of worship or school or postsecondary school or child-care facility existed on the same street.

(b) For the purposes of this subsection (3), "school" ~~and "postsecondary school" have the meanings provided in 20-5-402~~ includes public and private preschools.

(c) The provisions of subsection (3)(a)(iii) apply to new license applications submitted on or after [the effective date of this section].

(4) A licensee may not sell or otherwise transfer marijuana or marijuana products through a drive-up window, except that a dispensary may hand-deliver marijuana or marijuana products to a registered cardholder in a vehicle that is parked immediately outside the subject dispensary.

(5) A marijuana business may not dispense or otherwise sell marijuana or marijuana products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises.

(6) A marijuana business may not utilize the United States postal service or an alternative carrier other than a licensed marijuana transporter to transport, distribute, ship, or otherwise deliver marijuana or marijuana products.

(7) A marijuana business may not provide free marijuana or marijuana products or offer samples of marijuana or marijuana products.

(8) Marijuana or a marijuana product may not be given as a prize, premium, or consideration for a lottery, contest, game of chance, game of skill, or competition of any kind.

(9) (a) Except as provided in subsection (9)(c), an adult-use dispensary or medical marijuana dispensary must have a single, secured entrance for patrons and shall implement strict security measures to deter and prevent the theft of marijuana and unauthorized entrance in accordance with department rule.

(b) Except as provided in subsection (9)(c), a marijuana business that is not an adult-use dispensary or medical marijuana dispensary must implement security measures in accordance with department rule to deter and prevent the theft of marijuana and unauthorized entrance.

(c) The provisions of this subsection (9) do not supersede any state or local requirements relating to minimum numbers of points of entry or exit or any state or local requirements relating to fire safety.

(10) Each marijuana business shall install a video monitoring system that must, at a minimum:

(a) allow for the transmission and storage, by digital means, of a video feed that displays the interior and exterior of the cannabis establishment; and

(b) be capable of being recorded as prescribed by the department.

(11) An adult-use dispensary or medical marijuana dispensary may not operate between the hours of 8 p.m. and 9 a.m. daily.

(12) A person under 21 years of age is not permitted inside a marijuana business unless the person is a registered cardholder."

Section 4. Section 16-12-223, MCA, is amended to read:

"**16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor

cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only one tier at a time.

~~(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections~~

~~(1)(e)(i)(A) and (1)(e)(i)(B).~~

(iii) A cultivator under a combined-use license may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license;

(k) $27,000 for a cultivator with a tier 10 canopy license;

(l) $32,000 for a cultivator with a tier 11 canopy license; and

(m) $37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

(6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation."

SECTION 5. SECTION 16-12-224, MCA, IS AMENDED TO READ:

"**16-12-224. Licensing of dispensaries.** (1) Except as provided in 16-12-201(2), an applicant for a dispensary license shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied in the jurisdiction where each proposed dispensary is located if the proposed dispensary would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(2) When evaluating an initial or renewal application, the department shall evaluate each proposed dispensary for compliance with the provisions of 16-12-207 and 16-12-210.

(3) An adult-use dispensary licensee may operate at a shared location with a medical marijuana dispensary if the adult-use dispensary and medical marijuana dispensary are owned by the same person.

(4) A medical marijuana dispensary is authorized to sell exclusively to registered cardholders marijuana, marijuana products, and live marijuana plants.

(5) An adult-use dispensary is authorized to sell marijuana, marijuana products, and live marijuana plants to consumers or registered cardholders.

(6) (a) The department shall charge a dispensary license fee for an initial application and at each renewal.

(b) The dispensary license fee is $5,000 for ~~each~~ the first location that a licensee operates as an adult-use dispensary or a medical marijuana dispensary. The dispensary license fee increases cumulatively by $5,000 for each additional location under the same license.

(7) The department may adopt rules:

(a) for inspection of proposed dispensaries;

(b) for investigating owners or applicants for a determination of financial interest; and

(c) establishing or limiting the THC content of the marijuana or marijuana products that may be sold at an adult-use dispensary or medical marijuana dispensary.

(8) (a) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(b) Except as provided in subsection (8)(c), for purposes of this chapter, a single package is limited to:

(i) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential psychoactive THC of marijuana flower may not exceed 35%.

(ii) for a marijuana product sold as a capsule, no more than 100 milligrams of THC per capsule and no more than 800 milligrams of THC per package.

(iii) for a marijuana product sold as a tincture, no more than 800 milligrams of THC;

(iv) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of THC. A single serving of an edible marijuana product may not exceed 10 milligrams of THC.

(v) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and no more than 800 milligrams of THC per package;

(vi) for a marijuana product sold as a suppository or transdermal patch, no more than 100 milligrams of THC per suppository or transdermal patch and no more than 800 milligrams of THC per package; and

(vii) for any other marijuana product, no more than 800 milligrams of THC.

(c) A dispensary may sell marijuana or marijuana products having higher THC potency levels than described in subsection (8) to registered cardholders.

(9) A licensee or employee is prohibited from conducting a transaction that would result in a consumer or registered cardholder exceeding the personal possession amounts set forth in 16-12-106 and 16-12-515."

Section 6. Section 16-12-225, MCA, is amended to read:

"**16-12-225. Combined-use marijuana licensing -- requirements.** (1) The department may issue a total of eight combined-use marijuana licenses to entities that are:

(a) a federally recognized tribe located in the state; or

(b) a business entity that is majority-owned by a federally recognized tribe located in the state.

(2) A combined-use marijuana license consists of one ~~tier 1 canopy~~ CULTIVATOR license and one dispensary license allowing for the operation of a dispensary. Cultivation and dispensary facilities must be located at the same licensed premises.

(3) Initial licensure and annual fees for a combined-use license is $7,500.

~~(3)~~(4) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

(a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little Shell Chippewa tribe only, within 150 air-miles of the tribal service area; and

(b) in a county that has satisfied the local government approval provisions in 16-12-301 if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

~~(4)~~(5) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

~~(5)~~(6) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

~~(6)~~(7) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department."

SECTION 7. SECTION 16-12-509, MCA, IS AMENDED TO READ:

"**16-12-509. Written certification -- accompanying statements.** (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the patient for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the patient's treating physician and that the patient has been under the physician's ongoing medical care as part of a bona fide professional relationship with the patient; or

(ii) the patient's referral physician;

(b) confirm that the patient suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination, whether in person or, in accordance with subsection (4), through the use of telemedicine, that included a personal review of any medical records maintained by other physicians and that may have included the patient's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the patient and has considered the potential drug interaction with marijuana;

(g) state that the physician has a reasonable degree of certainty that the patient's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(h) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the patient;

(i) list restrictions on the patient's activities due to the use of marijuana;

(j) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(k) state that the physician will:

(i) continue to serve as the patient's treating physician or referral physician; and

(ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the treatment; and

(l) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) A physician who is providing written certification through the use of telemedicine:

(a) shall comply with the administrative rules adopted for telemedicine by the board of medical examiners provided for in 2-15-1731; and

(b) may not use an audio-only visit unless the physician has first established a physician-patient relationship through an in-person encounter.

(5) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

(6) The department shall provide the board of medical examiners with the name of any physician who provides a written certification for 39 or more patients within any given calendar year. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care. The physician whose practices are under review shall pay the costs of the board's review activities."

NEW SECTION. **Section 8. Appropriation.** There is appropriated $1,000 from the state special revenue fund under 16-12-111 to the department of revenue for the biennium ending June 30, 2023, for the purposes of notification to licensees of the provisions of [this act].

NEW SECTION. **Section 9. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

COORDINATION SECTION. **SECTION 10. COORDINATION INSTRUCTION**. IF BOTH HOUSE BILL NO. 128 AND [THIS ACT] ARE PASSED AND APPROVED, AND IF BOTH AMEND 16-12-223, THEN [SECTION 20 OF HOUSE BILL NO. 128], AMENDING 16-12-223, IS VOID AND [SECTION 5 OF THIS ACT], AMENDING 16-12-223, MUST BE AMENDED AS FOLLOWS:

"**16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by

only one tier at a time.

~~(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).~~

(iii) A cultivator under a combined-use license may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before ~~July 1, 2023~~ July 1, 2025, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license;

(k) $27,000 for a cultivator with a tier 10 canopy license;

(l) $32,000 for a cultivator with a tier 11 canopy license; and

(m) $37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

(6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation."

COORDINATION SECTION. **SECTION 11. COORDINATION INSTRUCTION**. IF BOTH HOUSE BILL NO. 128 AND [THIS ACT] ARE PASSED AND APPROVED, AND IF BOTH AMEND 16-12-201, THEN [SECTION 11 OF HOUSE BILL NO. 128], AMENDING 16-12-201, IS VOID AND [SECTION 2 OF THIS ACT], AMENDING 16-12-201, MUST BE AMENDED AS FOLLOWS:

"**16-12-201. Licensing of cultivators, manufacturers, and dispensaries.** (1) (a) Between January 1, 2022, and ~~June 30, 2023~~ June 30, 2025, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on ~~November 3, 2020~~ April 27, 2021, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after ~~July 1, 2023~~ July 1, 2025.

(2) (a) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 and to consumers at the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that

allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana licensee's next license renewal date, by which time the former medical licensee must have applied for and obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department."

COORDINATION SECTION. **SECTION 12. COORDINATION INSTRUCTION**. IF BOTH HOUSE BILL NO. 128 AND [THIS ACT] ARE PASSED AND APPROVED, AND IF BOTH AMEND 16-12-102, THEN [SECTION 3 OF HOUSE BILL NO. 128], AMENDING 16-12-102, IS VOID AND [SECTION 1 OF THIS ACT], AMENDING 16-12-102, MUST BE AMENDED AS FOLLOWS:

"**16-12-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(3) "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in

accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(4) "Canopy" means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or marijuana products for personal use from a licensed dispensary but not for resale.

(6) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(7) "Controlling beneficial owner" means a person that satisfies one or more of the following:

(a) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, or a publicly traded corporation, and:

(i) acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

(ii) is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

(iii) is otherwise in a position to control the marijuana business; or

(b) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

(8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.

(9) "Cultivator" means a person licensed by the department to:

(a) plant, cultivate, grow, harvest, and dry marijuana; and

(b) package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

(11) "Department" means the department of revenue provided for in 2-15-1301.

(12) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) "Former medical marijuana licensee" means a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on ~~November 3, 2020~~ April 27, 2021.

(15) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) The term may include:

(i) a greenhouse;

(ii) a hoop house; or

(iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(16) "Licensed premises" means all locations related to, or associated with, a specific license that is authorized under this chapter and includes all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

(17) "Licensee" means a person holding a state license issued pursuant to this chapter.

(18) "Local government" means a county, a consolidated government, or an incorporated city or town.

(19) "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under this chapter.

(20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.

(22) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana products.

(24) "Marijuana product" means a product that contains marijuana and is intended for use by a

consumer ~~by a means other than smoking~~. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates, including concentrates intended for use by smoking or vaping.

(25) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.

(28) "Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.

(29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.

(30) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(31) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

(32) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

(33) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(34) "Qualified institutional investor" means:

(a) a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) a bank holding company as defined in 32-1-109;

(c) a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such an insurance company;

(d) an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) a state or federal government pension plan; or

(g) any other entity identified by rule by the department.

(35) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(36) "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this chapter if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(38) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

~~(39) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.~~

~~(40)~~(39) "Testing laboratory" means a qualified person, licensed under this chapter that:

(a) provides testing of representative samples of marijuana and marijuana products; and

(b) provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

~~(41)~~(40) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) The term does not include the seeds, stalks, and roots of the plant. (Subsection (15)(b)(ii) terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

NEW SECTION. **SECTION 13. SEVERABILITY**. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 14. Effective ~~date~~ DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [~~This~~ THIS act] is effective on passage and approval.

(2) [SECTION 3] IS EFFECTIVE JANUARY 1, 2024.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:	
HB0903 - Generally revise marijuana laws (Hopkins, Mike)	
Status:	As Introduced

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Expenditures:					
General Fund	$0	$0	$0	$0	$0
State Special Revenue	$1,000	$0	$0	$0	$0
Revenue:					
General Fund	$0	$0	$0	$0	$0
State Special Revenue	$0	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0	$0

Description of fiscal impact: HB 903 revises the combined-use marijuana laws to allow cultivators to step up multiple tiers at a time and sets the license fee in code at $7,500. The bill appropriates $1,000 from the marijuana state special revenue account to the Department of Revenue in FY 2023.

FISCAL ANALYSIS

Assumptions:

1. HB 903 revises marijuana laws related to the combined-use marijuana licenses. The Department of Revenue may issue up to eight combined-use marijuana licenses to federally recognized tribes in the state. This license allows the tribe or tribal-owned business to operate a cultivation and dispensary license within 150 air-miles of the tribal reservation.
2. This bill would allow the cultivator under a combined-use license to increase their canopy level multiple tiers at a time up to a tier five license. The bill also sets the combined-use license fee at $7,500 in 16-12-225, MCA. This is currently the same license fee amount that the Department of Revenue has set in rules for combined-use licenses so there would be no fiscal impact due to this change. Also, the Department of Revenue has not issued any combined-use licenses up to this point.

3. This bill is effective upon passage and approval and removes the ability for other cultivators to increase their canopy license multiple tiers at a time, but that provision was scheduled to terminate after June 30, 2023, under current law.
4. Section 3 of the bill appropriates $1,000 from the marijuana state special revenue account to the Department of Revenue for the biennium ending June 30, 2023, for the purpose of notifying licensees of the provisions in this bill. This appropriation would reduce the final distributions out of the marijuana state special revenue account by an equal amount, which is minimal.
5. The Department of Revenue would not incur significant additional costs to implement this bill.

	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Fiscal Impact:					
Expenditures:					
Operating Expenses	$1,000	$0	$0	$0	$0
TOTAL Expenditures	$1,000	$0	$0	$0	$0
Funding of Expenditures:					
General Fund (01)	$0	$0	$0	$0	$0
State Special Revenue (02)	$1,000	$0	$0	$0	$0
TOTAL Funding of Exp.	$1,000	$0	$0	$0	$0
Revenues:					
General Fund (01)	$0	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):					
General Fund (01)	$0	$0	$0	$0	$0
State Special Revenue (02)	($1,000)	$0	$0	$0	$0

MH	3/31/23		3-31-23
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

EXHIBIT 1
DATE 3-28-23
HB 903

There's overproduction in MT with only 1/3 of the state canopy's capacity being utilized.

Current cultivation licenses, all tiers

Current total licensed sq ft (current state canopy): 1,397,750

Current allowable cultivation facilities: 675

Current licensed cultivation facilities: 389 (58% of total allowance)

Cultivator Tier	Cultivator License Count
Micro Tier (250 sq ft, 1 facility)	19
Tier 1 (1,000 sq ft, 1 facility)	85
Tier 2 (2,500 sq ft, 2 facilities)	53
Tier 3 (5,000 sq ft, 3 facilities)	34
Tier 4 (7,500 sq ft, 4 facilities)	11
Tier 5 (10,000 sq ft, 5 facilities)	33
Tier 6 (13,000 sq ft, 5 facilities)	11
Tier 7 (15,000 sq ft, 5 facilities)	2
Tier 8 (17,500 sq ft, 5 facilities)	1
Tier 10 (30,000 sq ft, 7 facilities)	7
Tier 11 (40,000 sq ft, 8 facilities)	1
Tier 12 (50,000 sq ft, 9 facilities)	3
	260

(above table as per MT Cannabis Control Division, Feb. 2023)

Tier 5 allows for 10,000 sq ft.

Tier Level	**Allowable Sq Ft**	**# of Licenses**	**Current Total Sq Ft micro – Tier 3**	**Additional Sq Ft if all Jump to Tier 5**
Micro	250 sq ft	19	4750 sq ft	+185,250 sq ft
Tier 1	1000 sq ft	85	85,000 sq ft	+765,000 sq ft
Tier 2	2500 sq ft	53	132,000 sq ft	+397,500 sq ft
Tier 3	5000 sq ft	34	170,000 sq ft	+170,000 sq ft
Total			391,750 sq ft	+1,517,750 sq ft

Tier 5 allows for 5 facilities.

Tier Level	Allowable Facilities	# of Licenses	Current Total Allowable Facilities	Additional Allowable Facilities at Tier 5
Micro	1	19	19	+76
Tier 1	1	85	85	+340
Tier 2	2	53	106	+159
Tier 3	3	34	102	+68
Total				+643 58%=373 new cultivation facilities

Using an industry formula derived from 2 studies, MT's current licensed canopy of 1,397,750 sq ft. would produce a low estimate of 142 tons of cannabis/yr.

This number would represent *current capacity*, not necessarily capacity over all of 2022 as the increase of square footage was on-boarded over a year plus.

The state cannabis tracking system, METRC's, actual numbers for 2022 show:

- 141,648 lbs. of production, or 70.8 tons
- An estimated utilization (sales to production ratio) of 72.8%. A "good" ratio is considered to be an 85% utilization ratio.
- **An excess in production to sales of 19.5 tons.**

Using the industry formula, the total reported production for 2022 could be produced on 453,274 sq ft, about 1/3 of current licensed canopy. In Nov. 2020, in MT's medical marijuana market, there was 448,600 sq ft of licensed cultivation space.

<u>No Sideboards to Overproduction in Montana</u>

Since January 2022 and the implementation of the adult use cannabis law, Montana has no sideboards on production. Until then, the provision in the law requiring a licensee to be selling 80% of production in order to move up a tier kept supply and demand in balance due to the vertical structure of businesses. You grow it. You sell it. But under the current model, "selling" 80% of production does not necessarily mean

retail sales. Production can be moved from a cultivator license to a manufacture or dispensary one, or wholesaled to another licensee, the cannabis remaining as stock, not sales, with the 80% metric nonetheless being met.

Combined Use License Exception

Combined use licenses being allowed to jump to a tier 5 would enable an increase of up to 80,000 sq ft of cultivation space in the state canopy and allow an addition of up to 40 more cultivation facilities, if all the licenses were secured and maximized. These licenses can be exercised in any "green zone" in the state (not only on tribal land). To date, there have been no applications for combined use licenses. In HB 701 in 2021, the ability to "jump-to-a-tier-5" expired in July of 2023, as HB 903 provides for. However, HB 903 does not have an expiration date on this provision for Combined Use licenses. We would request an expiration date of July 2025.

Montana Cannabis Industry Association
MTCIA

Prepared by Kate Cholewa, MTCIA, 406-459-4092, katemcholewa@gmail.com

Current MT Cultivation Capacity Based on Low Estimate Industry Formula

The Formula
35 grams per sq ft (some are getting 50-55 gr/sq ft)
65% of total sq ft (canopy) in production
4 grow cycles/yr. (some get 5-6, outdoor get one, but larger harvests)

Formula is derived from two studies. One study was conducted in 2013 in the Netherlands by Bedrocan. Bedrocan holds the government contract there to produce medical marijuana. The other was conducted in 2016 by BOTEC. BOTEC was contracted with by the Washington State Liquor and Cannabis Board (WSLCB) to conduct a study to find out how much cannabis needed to be produced in the state to meet demand. Both studies determined production at 40 gr/sq ft. MTCIA has been using 35 to avoid overestimates of production. In addition, since 2016, technology and skills have improved and thus so has production per square foot capacity.

Breakdown of MT production capacity using formula:

- 48,921,250 grams produced at 35 gr/sq ft.
- If utilizing 65% of canopy, that number is reduced to 31,798,812 grams.
- 4 cycles/yr. = 127,196,250 grams
- Divided by 28 = 4,542,687 oz (28 grams in an oz)
- Divided by 16 = 283,918 lbs. (16 oz in a lb.)
- Divided by 2000: 142 tons. This number would represent current capacity, not necessarily capacity over all of 2022 as the increase of square footage was on-boarded over a year plus.

Cultivation License Cost by Tier

$1,000 for a cultivator with a micro tier canopy license

$2,500 for a cultivator with a tier 1 canopy license

$5,000 for a cultivator with a tier 2 canopy license

$7,500 for a cultivator with a tier 3 canopy license

$10,000 for a cultivator with a tier 4 canopy license

$13,000 for a cultivator with a tier 5 canopy license

$15,000 for a cultivator with a tier 6 canopy license

$17,500 for a cultivator with a tier 7 canopy license

$20,000 for a cultivator with a tier 8 canopy license

$23,000 for a cultivator with a tier 9 canopy license

$27,000 for a cultivator with a tier 10 canopy license

$32,000 for a cultivator with a tier 11 canopy license

$37,000 for a cultivator with a tier 12 canopy license

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 179 DATE 3-28-23

MOTION Amendment

NAME	AYE	NO	PROXY
VICE CHAIR SEEKINS-CROWE	X		
VICE CHAIR HARVEY	X		
REP. ANDERSON	X		
REP. BERGSTROM		X	
REP. CARTER		X	
REP. FITZGERALD	X		
REP. GALLOWAY		X	X
REP. GIST	X		
REP. GUNDERSON		X	
REP. KARLEN		X	
REP. LOGE	X		
REP. LYNCH	X		
REP. MARSHALL		X	
REP. MATTHEWS	X		
REP. NICOL		X	
REP. OBLANDER	X		
REP. SULLIVAN		X	
REP. ZOLNIKOV		X	
CHAIR BUTTREY	X		

19 MEMBERS